

U-2C
02/01/10

ARTICLE 2 RECOGNITION

- 2.1 Pursuant to Resolution #39367 of the City Council of the City of San Jose and the provisions of applicable State law, the International Brotherhood of Electrical Workers Union, Local No. 332, hereinafter referred to as the Union is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit I attached and incorporated by reference into this Agreement. The classifications listed in Exhibit I and subsequent additions thereto or deletions therefrom shall constitute an appropriate unit.
- 2.2 The City agrees to meet and confer with the International Brotherhood of Electrical Workers Union, Local #332, prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions, which result in lay-off of employees one or more in the bargaining unit, constitute a significant impact on bargaining unit work.

5.3 Working in a Higher Classification

- 5.3.3 As an alternative to making appointments to a vacant position, a Department may, upon the approval of the Office of the City Manager, assign an employee to work in a higher classification for a period of time not to exceed six (6) months. The employee will be compensated in accordance with section 5.3.2. At the expiration of the period of assignment, the assigned employee shall return to his/her regular assignment. The Department may then request authorization to fill the position on a regular basis or return it to vacant status. Department Directors are encouraged to review all situations wherein employees are working in a higher class to determine if those functions are necessary to the organization and should be continued. If the functions are no longer necessary, the position should be eliminated. ~~This shall apply to employees who are represented by the IBEW.~~

7.7.1 Employee Rights

7.7.1.1 The City and the Union recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

7.7.1.2 Accordingly, membership in the Union shall not be compulsory. An employee has the right to choose, either: (a) to become a member of the Union; or (b), to pay to the Union a fee for representation services; or (c), to refrain from either of the above courses of action upon the grounds set forth in Section 7.8.6 below.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memorandum of Agreement, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement, except as required by law.
- 9.5 Notwithstanding the provisions of Article 9.4 and Article 24, the City may notify the Union in writing once during the term of this Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Union has the right to engage in protected concerted activities on the employees' own time provided such protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include strikes, partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes.

12.6 STEP IV - ARBITRATION

- 12.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate employee organization representative may appeal the grievance to Arbitration. The appropriate employee organization representative shall notify the Municipal Employee Relations Officer in writing, within fourteen (14) calendar days following receipt by the employee of the written answer at Step III.
- 12.6.2 Within fourteen (14) calendar days following the receipt of the notice of appeal to Step IV, a meeting ~~shall~~ may be arranged by the Municipal Employee Relations Officer with the appropriate employee organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.
- 12.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators.
- 12.6.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.